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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 812

MRS. LIBBYLEI GRAVES McKEWEN,
Petitioner,

vs.

MRS. MARJORIE L. McKEWEN, AND UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

GARNER W. GREEN,
ROSS R. BARNETT,
P. Z. JONES,
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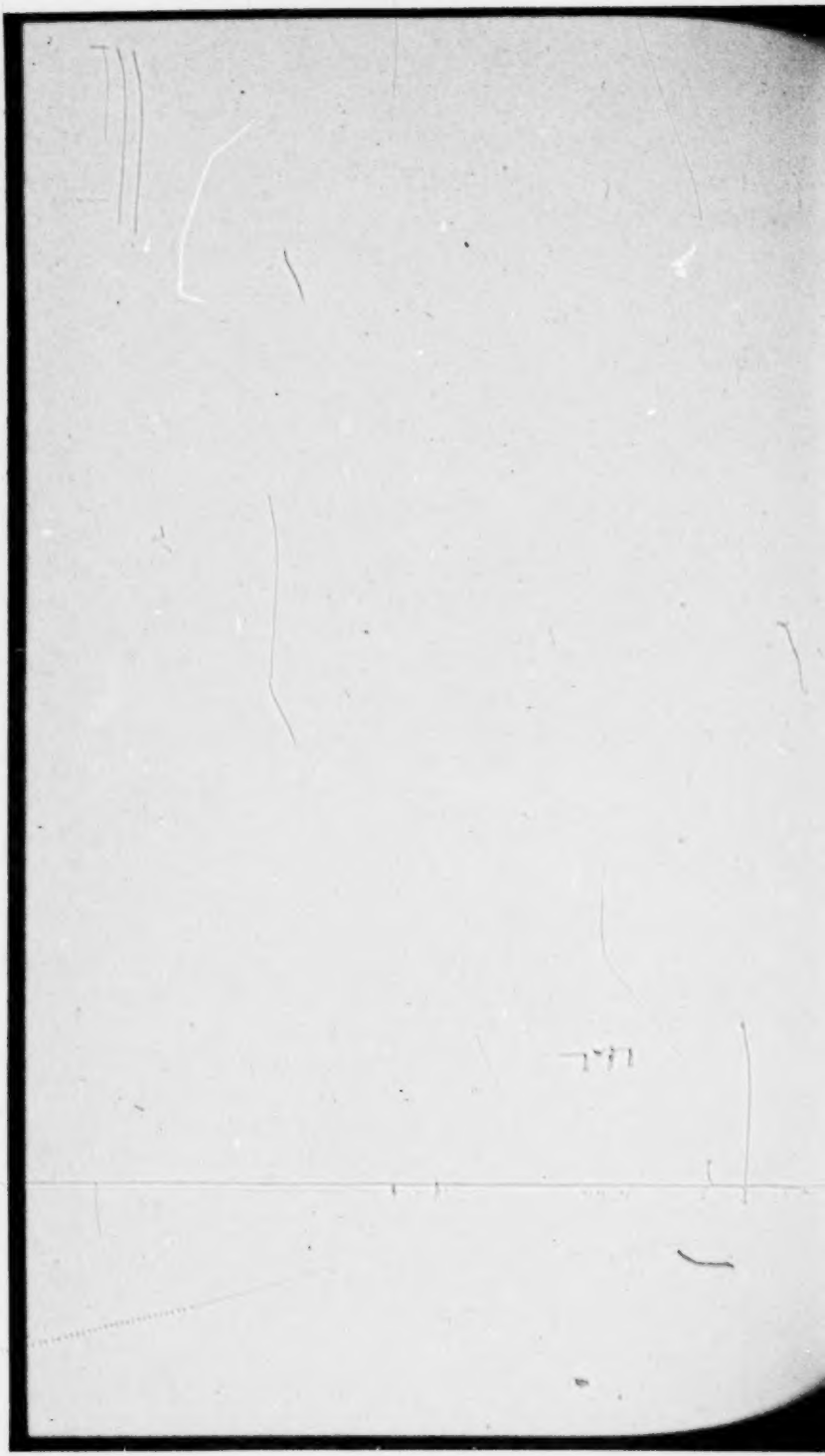

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Mrs. Libbylei Graves McKewen, a citizen of the United States residing in Hinds County in Mississippi, respectfully prays that writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals, 5th Cir., entered January 23, 1948, on which petition for rehearing was denied February 23, 1948. Said Court of Appeals affirmed judgment theretofore rendered in the

United States District Court in and for the Meridian Division of the Southern District of Mississippi, in favor of Mrs. Marjorie L. McKewen, (plaintiff there) respondent here, and against Mrs. Libbylei Graves McKewen, (a defendant) petitioner here.

Summary and Statement of Matters Involved

Respondent, Mrs. Marjorie L. McKewen, sued petitioner, Mrs. Libbylei Graves McKewen and the United States of America to reform a $10,000 life insurance policy issued to an Air Corps officer under the National Service Life Insurance Act of 1940 (*38 U. S. C. A. 801, et seq.*). The officer, unmarried when first insured, designated his mother, petitioner here, as beneficiary. Thereafter, he married. He died in aerial combat over Germany on January 11, 1944. His widow asserted to the Veterans Administration, who administers said insurance act, that she was the substituted beneficiary by reason of a signed "Government Insurance Report Form" in her possession. This document with two signed "Officers' Data Sheets", which later found their way into the Veterans Administration, caused a contest as to whether there had been a substitution. The Veterans Administration waived its right to interplead the $10,000 (*38 U. S. C. A. 445*), and applied its administrative processes in search of the solution on January 13, 1946. It found that the "evidence" of the widow "does not appear sufficient" to support a change of beneficiary. It cast the widow upon her election to appeal to the Administrator of Veterans Affairs, or, file suit in the appropriate United States Court. The widow elected the latter course.

Under stipulation of parties, the District Court considered only the proof in the file of the Veterans Administration, on such proof the Court found there had been a substitution and ordered reformation accordingly.

This action of the District Court was affirmed by the Court of Appeals. *McKewen* v. *McKewen, et al.*, 165 F. 2d 761.

Jurisdiction

Decisions of the Administrator of Veterans Affairs on any question of law or fact is final and conclusive, except as to insurance. (*38 U. S. C. A. 11 a-2*). After the refusal of the Veterans Administration to award the money to her, the widow waived her right to appeal to the Administrator of Veterans Affairs, and elected to file suit and proceed on the identical proof in the District Court, her rejected claim constituting the disagreement necessary to give the District Court jurisdiction of her action to recover benefits under the policy.

38 U. S. C. A. 445; 38 U. S. C. A. 817; Leyerly v. *United States,* 10 Cir., 162 F. 79, 83.

Jurisdiction of this Court is conferred by *Section 240, Amended,* of *Judicial Code (28 U. S. C. A. 347).*

The Issue

The question present is whether the proof is sufficient to support a change of beneficiary.

Reasons Relied On for Allowance of Writ

It is respectfully submitted that:

1. The decision of the 5th Cir., here asked to be reviewed, conflicts with the decision of the 10th Cir., in *Bradley* v. *United States,* 143 F. 2d 573, (Cert. Den. 65 S. Ct. 429, 323 U. S. 793, 89 L. Ed. 632), and the conflict in the views of these two Circuits should be clarified for the future guidance of the Courts and of the Veterans Administration.

2. It is important to the families of deceased soldiers and to the Veterans Administration for this Court to declare

the judicial recognition Courts should give an administrative finding of the Veterans Administration, where such finding is based on undisputed written documents and is neither arbitrary nor capricious.

3. There should be a uniformity in the decisions relating to the facts under the National Service Life Insurance Act.

WHEREFORE, a writ of certiorari is respectfully prayed.

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PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Opinions Delivered

Decision of Veterans Administration (R. 41).

Decision of District Court (R. 55).

Opinion (R. 58) and order (R. 59) overruling motion for new trial.

Opinion, Court of Appeals (R. 81). 165 F. 2d 761.

Statement as to Jurisdiction of the Supreme Court of the United States

Sec. 240 (a), amended, of Judicial Code (28 U. S. C. A. 347).

The decision and judgment of the Circuit Court of Appeals were entered on January 23, 1948. The order denying petition for rehearing was entered on February 23, 1948. The time for filing petition for certiorari, supporting brief and the record ran from said last mentioned date.

Statement of the Case

The case as stated in the petition for writ of certiorari is supplemented to this extent:

The deceased officer, John W. McKewen, Jr., took out a life insurance policy under the National Service Life Insurance Act of 1940, on January 28, 1942, and his mother, Mrs. Libbylei Graves McKewen, was recorded as beneficiary therein. The certificate of the beneficiary appears in the record (R. 19).

The officer married Miss Marjorie Landes on June 25, 1943.

At an Army Air Base, at Kearney, Nebraska, on October 23, 1943, he signed an Officers' Data Sheet (R. 24), wherein, among other things, appeared:

"Person designated as beneficiary: Marjorie Landes McKewen.
Relation: Wife.
Address: 319 South Prentiss Street, Jackson, Mississippi.
Total amount Class N or D Insurance: $10,000.
Insurance Beneficiary: Marjorie Landes McKewen.
Relation: Wife."

On the same date at the same Air Base, he signed a mimeographed form styled "Government Insurance Report Form", addressed:

"To: Mrs. Marjorie L. McKewen, Jackson, Mississippi, • • • On Date of 1/28/42, I took out $10,000 in (National Service Life Insurance) (United States Government Insurance), naming you as my beneficiary."

On December 1, 1943, at an Army Air Base in England he signed another Officers' Data Sheet, wherein, among other things, appeared:

"Government Insurance—Yes. Amount: $10,000. Beneficiary: Marjorie L. McKewen."

The death of the deceased occurred on January 11, 1944.

The documents unsupported by other evidence, constitute and is the proof of respondent, Mrs. Marjorie L. McKewen, that there was a change of beneficiary.

ARGUMENT

The Proof Is Insufficient to Support a Change of Beneficiary

The opinion of the Court of Appeals (R. 85) states:

> "It is true that nowhere in the record does there appear any written request by the insured to the Veterans Administration, nor any statement by him to anyone, that he had 'changed the beneficiary' of his insurance, but there are three official documents executed by the insured—for the information of his Government (the insurer), his widow, and whomsoever else into whose hands the documents might come in due course, stating that his wife was the beneficiary. Although his mother was initially the beneficiary, nevertheless he on three later occasions stated in writing that he had made his wife the beneficiary, and for us now to say that in these documents there was no state-

ment indicating that he had 'changed the beneficiary' is to look at form and to overlook substance".

This conflicts with the conclusion reached in the opinion of *Bradley* v. *United States,* 143 F. 2d 573, 577.

> "There is nothing in the confidential reports or the evidence in this case from which it can be legitimately inferred that it was intended for the use and information of the Veterans' Administration, or that its purpose was to effect a change of beneficiary under the life insurance policy. The administration was a total stranger to the report, and did not receive it or have knowledge of its execution until after the death of the insured, and it was forwarded to the administration upon its request. It is not a notice of any kind, it is not a direction that the name of the beneficiary be changed, and does not express or indicate even indirectly or inaptly a desire to have the beneficiary changed. Indeed, it is not a voluntary expression of any wish, desire or intention. At most it indicates a belief or understanding that his wife was the then present beneficiary. When given its most liberal construction in the light of all the facts and circumstances, we are convinced that it cannot be treated as an effectuation of the insured's intention to change his beneficiary."

Certiorari Denied *65 S. Ct. 429; 323 U. S. 793; 89 L. Ed. 632.*

The cases under the National Service Life Insurance Act relating to change of beneficiary recognize the well established principles that:

The burden of proof is upon the one claiming to be substituted beneficiary;

The deceased was required to do everything reasonably within his power to accomplish the change (leaving only ministerial acts to be performed by the insurer);

The principles which actuate a Court in giving effect to the ascertained intentions of the insured have application only where the party has attempted to act for himself;

A mere intent, without an overt act, is insufficient; and,

The insurer's rules and regulations are for the insurer's benefit and can be waived by it.

These principles were recognized in the Court of Appeals in the case at bar, but erroneously applied to the proof herein:

Compare the cases where the proof was held insufficient, with the cases where the proof was held sufficient:

The proof was insufficient in:

Bradley v. *United States,* 143 F. 2d 573, Cert. Den. 65 S. Ct. 429, 323 U. S. 793, 89 L. Ed. 632;
Ramsey v. *United States,* 72 F. Supp. 613.

The proof was sufficient in:

Roberts v. *United States et al.,* 4 Cir., 157 F. 2d 906, Cert. Den. 67 S. Ct. 870, 330 U. S. 829, 91 L. Ed. 1278;
Mitchell v. *United States,* 72 F. Supp. 352; 165 F. 2d 758, (5 Cir.);
Collins v. *United States,* 10 Cir., 161 F. 2d 64, Cert. Den. 67 S. Ct. 1756, 331 U. S. 859, 91 L. Ed. 1866;
Citron v. *United States,* 69 F. Supp. 830;
Woods v. *United States,* 69 F. Supp. 760;
Van Doren v. *United States,* 68 F. Supp. 222;
Walker v. *United States,* 70 F. Supp. 422;
Eggleston v. *United States,* 71 F. Supp. 114.

We respectfully submit there is no evidence at all, competent or otherwise, that the three documents were official documents of the War Department, or of the Veterans Administration.

The Court of Appeals invoked Rule 52 of the Federal Rules of Civil Procedure in affirming the judgment of the District Court.

Rule 52 has no application, for the case here was not tried upon facts, but tried upon the pleadings and stipulation of undisputed documents.

Where the facts are not in dispute, inferences and conclusions drawn by the trial court are not binding on the appellate court, which remains free to draw inferences and conclusions which, in its opinion, the findings reasonably induce.

Kuhn v. *Princess Lida of Thurn & Taxis,* 3 Cir., 119 F. 2d 704; *Adams County* v. *Northern Pac. Ry. Co.,* 9 Cir., 115 F. 2d 768, 779; *Carter Oil* v. *McQuigg,* 7 Cir., 112 F. 2d 265, 279; *Stubbs* v. *Fulton National Bank of Atlanta,* 146 F. 558, (Cert. Den. 65 S. Ct. 1202, 325 U. S. 864, 89 L. Ed. 1984).

The Administrative Finding of Facts Should Be Final Because It Is Reasonable and Just and Is Not Capricious and Is Based On Substantial Evidence.

The Administrative Procedure of the Veterans Administration is fully set forth in Part II, Sen. Doc. 186, 76 Cong. 3rd Ses. on Administrative Procedure in Government Agencies.

The functions of the adjudicatory group administering insurance appears on Pages 54-57, inclusive, of said monograph, and were followed in the case at bar.

38 U. S. C. A. 808, as it was prior to the 1946 amendment, provided that all decisions of the Administrator under the provisions of the Chapter relating to the National Service Life Insurance Act, and Regulations issued pursuant thereto, were final and conclusive, except as to disagreements provided for in Section 817.

Courts must assume responsibility for the construction of the National Service Life Insurance Act. *Zazove* v. *U. S.,* 156 F. 2d 24.

The Veterans Administration may not adjudicate the question whether a valid change of beneficiary has been effected in accordance with the prescribed means and method which is the legal standard for that purpose. *Bradley* v. *U. S.*, 143 F. 2d 573, 577.

But, the Veterans Administration here applied no legal standards in finding the facts from undisputed evidence.

Decision of the Veterans Administration was reached in this case on January 12, 1946 (Item 23, R. 41). *Bradley* v. *U. S.*, *supra*, was decided May 30, 1944.

The doctrine of administrative finality is the doctrine under the separation of powers by which the judicial sphere of Government accords certain finality to the acts of agencies of the Legislature on matters within the constitutional power of the Legislature. Congress may not delegate the power to make law, but it may delegate to an administrative agent the power to determine matters of a factual nature to which the law declared by Congress is to apply. Since the power to determine such factual matters is within the Legislative sphere of Government, the doctrine of administrative finality is the broad rule that the determination of any such factual matter by the administrative agent of the Legislature is final so long as a rational basis can be found for the determination. Specifically, the doctrine of administrative finality is the aggregate of the rules that the finding of an administrative agency on such a factual matter is conclusive upon a reviewing Court when it is supported by substantial evidence, and the weighing of evidence, the credibility of witnesses and the drawing of inferences from evidence, are all matters for the agency, not the reviewing Court. However, questions of law that are raised are to be decided in the independent judgment of the reviewing Court. They are judicial, not administrative questions, although in deciding them the reviewing

Court will accord weight or great weight to an experienced judgment expressed by the agency.

The following cases apply the doctrine of administrative finality:

Veterans Administration (on administrative questions). *U. S.* v. *Williams,* 278 U. S. 271, 73 L. Ed. 314, 49 S. Ct. 97; *Meadows* v. *U. S.,* 281 U. S. 271, 74 L. Ed. 852, 50 S. Ct. 279; *Silberschien* v. *U. S.,* 266 U. S. 221, 225, 45 S. Ct. 69, 69 L. Ed. 256.

Tax Court. Comr. of Internal Rev. v. *Sunnen,* No. 227, October 1947 Term, U. S. S. Ct., decided April 5, 1948.

Federal Trade Commission. Federal Trade Comm. v. *Cement Institute,* No. 23, October 1947 Term, U. S. S. Ct., decided April 26, 1948; *Gulf Oil Corp.* v. *F. T. C.,* 150 F. 2d 106.

Alien Cases. Bridges v. *Wixon,* 326 U. S. 135, 89 L. Ed. 2103, 65 S. Ct. 1443.

Interstate Commerce Commission. R. F. C. v. *Denver & R. G. W. R. Co.,* 328 U. S. 495, 90 L. Ed. 1400, 66 S. Ct. 1282.

Federal Power Commission. Conn. Light & Power Co. v. *Fed. Power Comm.,* 324 U. S. 515, 89 L. Ed. 1150, 65 S. Ct. 749.

National Labor Relations Board. Natl. Labor Relations Board v. *Hearst Publications,* 322 U. S. 111, 88 L. Ed. 1170, 64 S. Ct. 851.

Railroad Retirement Board. Utah Copper Co. v. *R. R. Retirement Board,* 129 F. 2d 358 (Cert. Den. 317 U. S. 687, 87 L. Ed. 550, 63 S. Ct. 258).

Securities and Exchange Commission. Securities and Exchange Comm. v. *Chenery Corp.,* 318 U. S. 80, 87 L. Ed. 626, 63 S. Ct. 454.

Selective Service Boards. Estep v. *U. S.,* 327 U. S. 114, 90 L. Ed. 567, 66 S. Ct. 423.

Tax Court. Commr. of Internal Rev. v. *Flowers,* 326 U. S. 465, 90 L. Ed. 203, 66 S. Ct. 250.

Director of the Bituminous Coal Division. Indianapolis v. *Wheeler,* 132 F. 2d 879 (Cert. Den. 318 U. S. 781, 87 L. Ed. 1149, 63 S. Ct. 859).

State Agencies. Arkansas Corp. Comm. v. *Thompson,* 313 U. S. 132, 85 L. Ed. 1244, 61 S. Ct. 888.

Mr. Chief Justice Stone in *Medo Photo Supply Corp.* v. *National Labor Relations Board,* 321 U. S. 678, 681, 88 L. Ed. 1007, 64 S. Ct. 830, said:

> "It has long been settled that findings of the board, *as with those of other administrative agencies,* are conclusive upon reviewing courts when supported by evidence, that the weighing of conflicting evidence is for the board and not the courts, that the inferences from the evidence are to be drawn by the board and not the courts, save only as questions of law are raised and that upon such questions of law the experienced judgment of the board is entitled to great weight". (Italics ours.)

It is respectfully submitted that this case calls for the exercise by this Court of its supervisory powers, and that this Court should grant said petition for a writ of certiorari herein, directing said Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in this cause to this Court, so that this Court may review and act thereon as of right and according to law, and as ought to be done.

Respectfully submitted,

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